IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3062 of 2007()

CC.193/2007 of JUDL. MAGI. OF FIRST CLASS-I (FOREST OFFENCES), THODUPUZHA

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PETITIONER: 2ND ACCUSED

JIMMY JOSEPH @ JINSON,
S/O JOSEPH, AGE 39, PARAPUZHA KARA,
KODIKULAM VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.RENJITH B.MARAR
SMT.LAKSHMI.N.KAIMAL

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. JOHNY JOHN, S/O JOHN,
THALACHIRA VEEDU, PARAPUZHA KARA,
KODIKULAM VILLAGE, THODUPUZHA TALUK.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3062 of 2007

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Dated this the 5th day of October, 2007

O R D E R

The petitioner is the second accused in a prosecution under Section 323 r/w. 34 I.P.C. Earlier a crime was registered as Crime No.159 of 2006. Investigation was conducted. The brother of the petitioner was the only accused in that crime. That crime was referred as false. Later, the defacto complainant has filed a private complaint. Cognizance has been taken. Not only the brother of the petitioner, but the petitioner has also been arrayed as an accused in the private complaint. The petitioner had appeared before the learned Magistrate. He has been enlarged on bail. The petitioner is employed abroad. The petitioner, in these circumstances, has come to this court with the prayer that the learned Magistrate may be directed to exempt the petitioner from personal appearance and to be represented by his counsel in the course of the trial.

2. It is certainly for the petitioner to make an appropriate application under Section 205 Cr.P.C. before the learned Magistrate for exemption from personal appearance. It is a private complaint. In the police complaint the petitioner was not an accused. The police

has referred the said crime as false. In these circumstances I find no reason why any Magistrate should not consider the petitioner's application for exemption favourably. But the petitioner, without applying before the learned Magistrate, has rushed to this Court with this petition. I find the conduct of the petitioner to be not justified at all.

3. This Crl.M.C. is hence dismissed. The petitioner can apply for exemption before the learned Magistrate. To consider such application it is not necessary to insist on personal presence of the petitioner. Even in his absence such application can be considered by the learned Magistrate and appropriate orders passed expeditiously.

4. Hand over the order.

(R. BASANT)
Judge

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